

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Nov 16, 2020**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

TORIE F.,

Plaintiff,

v.

ANDREW M. SAUL,  
COMMISSIONER OF SOCIAL  
SECURITY

Defendant.

No. 2:19-CV-00398-JTR

ORDER GRANTING IN PART  
PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT AND  
REMANDING FOR ADDITIONAL  
PROCEEDINGS

**BEFORE THE COURT** are cross-motions for summary judgment. ECF No. 13, 14. Attorney Chad Hatfield represents Torie F. (Plaintiff); Special Assistant United States Attorney Leisa Wolf represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 7. After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS IN PART** Plaintiff's Motion for Summary Judgment; **DENIES** Defendant's Motion for Summary Judgment; and **REMANDS** the matter to the Commissioner for additional proceedings pursuant to 42 U.S.C. § 405(g).

## JURISDICTION

Plaintiff filed applications for Disability Insurance Benefits and Supplemental Security Income on October 6, 2016, alleging disability since March 4, 2015, due to pressure on her brain, migraines, loss of vision, dizziness, extreme pain in her neck, head, and back, and ringing in her ears. Tr. 68-69. The applications were denied initially and upon reconsideration. Tr. 108-14, 117-22. Administrative Law Judge (ALJ) Donna Walker held a hearing on August 7, 2018, Tr. 34-67, and issued an unfavorable decision on October 31, 2018, Tr. 15-25. Plaintiff requested review by the Appeals Council. Tr. 178-81. The Appeals Council denied Plaintiff's request for review on September 17, 2019. Tr. 1-5. The ALJ's October 2018 decision thus became the final decision of the Commissioner, which is appealable to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this action for judicial review on November 19, 2019. ECF No. 1.

## STATEMENT OF FACTS

Plaintiff was born in 1990 and was 24 years old as of her alleged onset date. Tr. 24. She completed one year of college and CNA training, and worked as a CNA and housekeeper in a nursing home. Tr. 204. In 2015 she started to develop headaches with eye strain, which progressed into migraines. Tr. 315. She sought treatment from an ophthalmologist and a neurologist, who explored possible optic nerve problems and intracranial pressure. Tr. 283, 315. A neuro-ophthalmologist eventually diagnosed her with anomalous optic nerves and severe migraines. Tr. 308. She was treated with migraine medications and continued to report moderate to severe headaches multiple times per week. Tr. 2551, 302, 325, 334, 352.

## STANDARD OF REVIEW

The ALJ is responsible for determining credibility, resolving conflicts in medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,

201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed only if it is not supported by substantial evidence or if it is based on legal error. *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is defined as being more than a mere scintilla, but less than a preponderance. *Id.* at 1098. Put another way, substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one rational interpretation, the Court may not substitute its judgment for that of the ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999). If substantial evidence supports the administrative findings, or if conflicting evidence supports a finding of either disability or non-disability, the ALJ's determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a decision supported by substantial evidence will be set aside if the proper legal standards were not applied in weighing the evidence and making the decision. *Browner v. Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988).

### SEQUENTIAL EVALUATION PROCESS

The Commissioner has established a five-step sequential evaluation process for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a), 416.920(a); *Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four, the burden of proof rests upon the claimant to establish a prima facie case of entitlement to disability benefits. *Tackett*, 180 F.3d at 1098-1099. This burden is met once a claimant establishes that a physical or mental impairment prevents the claimant from engaging in past relevant work. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). If a claimant cannot perform past relevant work, the ALJ proceeds to step five, and the burden shifts to the Commissioner to show (1) the claimant can make an adjustment to other work; and (2) the claimant can perform specific jobs that exist in the national economy. *Batson v. Commissioner of Social Sec.*

1 *Admin.*, 359 F.3d 1190, 1193-1194 (2004). If a claimant cannot make an  
2 adjustment to other work in the national economy, the claimant will be found  
3 disabled. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v).

#### 4 ADMINISTRATIVE DECISION

5 On October 31, 2018, the ALJ issued a decision finding Plaintiff was not  
6 disabled as defined in the Social Security Act.

7 At step one, the ALJ found Plaintiff had not engaged in substantial gainful  
8 activity since March 4, 2015, the alleged onset date. Tr. 17.

9 At step two, the ALJ determined Plaintiff had the following severe  
10 impairments: occipital neuralgia, with secondary chronic headaches;  
11 environmental allergies; and asthma. *Id.*

12 At step three, the ALJ found Plaintiff did not have an impairment or  
13 combination of impairments that met or medically equaled the severity of one of  
14 the listed impairments. Tr. 18.

15 The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and found  
16 she could perform medium exertion level work with the following limitations:

17 Regarding postural abilities, the claimant has the unlimited ability to  
18 balance, stoop (*i.e.*, bend at the waist), kneel, crouch (*i.e.*, bend at the  
19 knees) or crawl; she can occasionally climb ramps or stairs, but should  
20 never climb ladders, ropes or scaffolds. The claimant has no  
21 limitations regarding the ability to handle, finger, or feel, reach in all  
22 directions, including overhead, and has the unlimited ability to see,  
23 hear and communicate. Regarding the environment, the claimant has  
24 no limitations regarding exposure to extreme cold, extreme heat,  
25 wetness, humidity, but should avoid concentrated exposure to noise,  
26 vibration, fumes, odors, dust, gases or poor ventilation and hazards,  
27 such as dangerous machinery and unprotected heights.

28 *Id.*

At step four, the ALJ found Plaintiff was capable of performing her past  
relevant work as a housekeeper and nurse assistant. Tr. 23.

1 Despite making dispositive step four findings, the ALJ alternatively found at  
2 step five that, considering Plaintiff's age, education, work experience, and residual  
3 functional capacity, there were other jobs that existed in significant numbers in the  
4 national economy that Plaintiff could perform, specifically identifying the  
5 representative occupations of laundry worker and order filler. Tr. 24-25.

6 The ALJ thus concluded Plaintiff was not under a disability within the  
7 meaning of the Social Security Act at any time from the alleged onset date through  
8 the date of the decision. Tr. 25.

### 9 ISSUES

10 The question presented is whether substantial evidence supports the ALJ's  
11 decision denying benefits and, if so, whether that decision is based on proper legal  
12 standards.

13 Plaintiff contends the ALJ erred by (1) improperly evaluating medical  
14 opinions; (2) rejecting severe impairments at step two; (3) conducting an  
15 inadequate step three analysis and failing to find Plaintiff met or equaled Listing  
16 11.02; (4) improperly rejecting lay witness testimony; (5) improperly rejecting  
17 Plaintiff's subjective complaints; and (6) making inadequate step four and step five  
18 findings.

### 19 DISCUSSION

#### 20 1. Plaintiff's subjective statements

21 Plaintiff contends the ALJ erred by improperly rejecting her subjective  
22 statements. ECF No. 13 at 17-20.

23 It is the province of the ALJ to make determinations regarding a claimant's  
24 subjective complaints. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).  
25 However, the ALJ's findings must be supported by specific, cogent reasons.  
26 *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Once the claimant  
27 produces medical evidence of an underlying medical impairment, the ALJ may not  
28 discredit testimony as to the severity of an impairment merely because it is

1 unsupported by medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir.  
2 1998). Absent affirmative evidence of malingering, the ALJ's reasons for rejecting  
3 the claimant's testimony must be "specific, clear and convincing." *Smolen v.*  
4 *Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996); *Lester v. Chater*, 81 F.3d 821, 834  
5 (9th Cir. 1996). "General findings are insufficient: rather the ALJ must identify  
6 what testimony is not credible and what evidence undermines the claimant's  
7 complaints." *Lester*, 81 F.3d at 834; *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir.  
8 1993).

9 The ALJ concluded Plaintiff's medically determinable impairments could  
10 reasonably be expected to cause the alleged symptoms; however, Plaintiff's  
11 statements concerning the intensity, persistence and limiting effects of those  
12 symptoms were not entirely consistent with the medical evidence and other  
13 evidence in the record. Tr. 19. The ALJ found Plaintiff's allegations to be  
14 unsupported by the record evidence and her daily activities. Tr. 19-22.

15 Plaintiff argues her daily activities were modest and not inconsistent with  
16 her allegations, as she is able to engage in regular personal and household care  
17 only when she does not have a migraine. ECF No. 13 at 19-20. She further argues  
18 the ALJ failed to account for the episodic nature of her condition, and that periods  
19 of decreased symptoms were not sustained. *Id.* Defendant argues the ALJ  
20 reasonably interpreted the record as demonstrating activities inconsistent with  
21 Plaintiff's allegations and as showing improvement in her symptoms with  
22 treatment. ECF No. 14 at 5-8.

23 The Court finds the ALJ failed to offer specific clear and convincing reasons  
24 for discounting Plaintiff's symptom allegations.

25 While a claimant's daily activities may support an adverse credibility  
26 finding if the activities contradict her other testimony, *Orn v. Astrue*, 495 F.3d 625,  
27 639 (9th Cir. 2007), the mere fact that a claimant is capable of performing some  
28 basic daily activities does not necessarily detract from her overall credibility.

1 *Garrison v. Colvin*, 759 F.3d 995, 1016 (9th Cir. 2014); *Benecke v. Barnhart*, 379  
2 F.3d 587, 594 (9th Cir. 2004). The Ninth Circuit has acknowledged “many home  
3 activities are not easily transferable to what may be the more grueling environment  
4 of the workplace, where it might be impossible to periodically rest or take  
5 medication.” *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989).

6 The ALJ noted Plaintiff’s ability to care for her children and pets and attend  
7 to regular household chores and self-care. Tr. 19-20. However, none of these  
8 activities are inconsistent with Plaintiff’s reports that she has varying levels of  
9 headache pain from day to day, and is unable to perform any activities when  
10 afflicted with a migraine. Tr. 54-57. In her function report she stated she does  
11 chores during “that small window of time where I feel a little better.” Tr. 211. Her  
12 fiancé reported she does household chores, or tries to, at least two times per week.  
13 Tr. 227. The record contains numerous reports that her ability varies from day to  
14 day depending on her pain level, and sometimes she needed assistance in caring for  
15 herself and her children. Tr. 55-56, 214, 225, 230, 244-45, 302. The ALJ failed to  
16 acknowledge the varying degree of Plaintiff’s abilities. Therefore, the finding that  
17 Plaintiff’s activities are inconsistent with her symptom allegations is not supported  
18 by substantial evidence.

19 Unexplained or inadequately explained reasons for failing to seek medical  
20 treatment or follow a prescribed course of treatment can cast doubt on a claimant’s  
21 subjective complaints. *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989). To the  
22 extent the ALJ implied Plaintiff’s allegations were not reliable due to her delay in  
23 receiving specialized care at the eye clinic and her failure to have restarted  
24 treatments following the birth of her child, the Court finds this rationale is not  
25 supported by substantial evidence. The ALJ acknowledged Plaintiff’s testimony  
26 that she had issues with her medical insurance in 2015 and 2016, which  
27 contributed to her delay in receiving treatment at the eye clinic; but the ALJ  
28 implied that Plaintiff’s testimony was not believable due to the record indicating



1 she continued to be treated by other medical providers. Tr. 21. Plaintiff's testimony  
2 was not that she did not have insurance at the time, but rather was that her  
3 insurance company was not authorizing the specific course of treatment. Tr. 58.  
4 The ALJ offered no explanation as to why these difficulties with her insurance  
5 company undermined her reports of debilitating symptoms. Tr. 21. Regarding re-  
6 initiation of treatment following her pregnancy, Plaintiff testified she was still  
7 looking into what treatments were safe to start while breastfeeding, as she had only  
8 given birth the month before the hearing. Tr. 47, 59-60. This delay does not  
9 constitute substantial evidence of a failure to pursue treatments.

10 The only other rationale offered by the ALJ for discounting Plaintiff's  
11 allegations was that her reports of symptoms were not consistent with the record  
12 evidence. Tr. 20-22. A lack of support from the medical records alone is an  
13 insufficient basis for discrediting a claimant. *Reddick v. Chater*, 157 F.3d 715, 722  
14 (9th Cir. 1998). Defendant argues the ALJ reasonably found Plaintiff's condition  
15 improved with treatment. ECF No. 14 at 4. An ALJ may consider the treatment an  
16 individual has received and the effectiveness of that treatment in assessing a  
17 claimant's allegations. Social Security Ruling 16-3p. However, evidence of  
18 temporary relief or cycles of waxing and waning symptoms does not demonstrate  
19 inconsistency with a claimant's overall allegations of limitations. The record  
20 reflects Plaintiff occasionally experienced some reduction in her symptoms, but the  
21 relief from various medications was not sustained, and she continued to report  
22 weekly or daily headaches. Tr. 55, 285, 293, 325, 329, 334, 357, 365, 369.

23 On remand, the ALJ will reevaluate Plaintiff's subjective allegations and  
24 make specific clear and convincing findings regarding the reliability of those  
25 reports.

## 26 **2. Third party**

27 Plaintiff asserts the ALJ erred in rejecting evidence provided by her  
28 significant other. ECF No. 13 at 16-17.



1 Lay witness testimony is “competent evidence” as to “how an impairment  
2 affects [a claimant’s] ability to work.” *Stout v. Comm’r, Soc. Sec. Admin.*, 454  
3 F.3d 1050, 1053 (9th Cir. 2006); *see also Dodrill v. Shalala*, 12 F.3d 915, 918-19  
4 (9th Cir. 1993) (“[F]riends and family members in a position to observe a  
5 claimant’s symptoms and daily activities are competent to testify as to her  
6 condition.”). An ALJ must give “germane” reasons to discount evidence from  
7 these “other sources.” *Dodrill*, 12 F.3d at 919.

8 Plaintiff’s fiancé, Jacob Chambers, completed a third-party function report  
9 and a headache questionnaire, commenting on Plaintiff’s conditions and  
10 limitations. Tr. 225-32, 253. He noted Plaintiff had headaches daily, with more  
11 severe ones occurring a few times per month. 253. He reported Plaintiff was able  
12 to tend to her daughter and regular self- and household care, but sometimes was  
13 limited to laying down all day, and that her functioning depended on how she was  
14 feeling on a particular day. Tr. 225-30.

15 The ALJ gave this evidence little weight, noting the opinion was  
16 inconsistent with Plaintiff’s daily activities and that the record did not support Mr.  
17 Chambers’ statements regarding Plaintiff’s hearing impairment. Tr. 20.

18 Plaintiff argues the ALJ incorrectly found her activities to be inconsistent  
19 with the opinion as her activities were limited and she often needed assistance.  
20 ECF No. 13 at 16-17. She also argues the medical records reflect her reports of  
21 tinnitus, supportive of Mr. Chambers’ note of hearing problems. *Id.* Defendant  
22 argues the ALJ reasonably found Plaintiff’s activities to be inconsistent with Mr.  
23 Chambers’ opinion, which was a germane reason for disregarding it. ECF No. 14  
24 at 12-13. Defendant also argues the ALJ gave sufficient reasons for discounting  
25 Plaintiff’s reports, which were similar to those of Mr. Chambers. *Id.*

26 The Court finds the ALJ failed to offer a germane reason for discounting Mr.  
27 Chambers’ opinion. As discussed above, the ALJ’s recitation of Plaintiff’s  
28 activities failed to consider the episodic nature of her headache condition. None of

1 the limitations identified by Mr. Chambers are inconsistent with Plaintiff's  
2 performance of sporadic activity when she was able to. Indeed, Mr. Chambers  
3 noted that Plaintiff was sometimes able to perform activities and at other times was  
4 confined to bed or the couch. Tr. 225.

5 As to the records regarding Plaintiff's hearing, Mr. Chambers completed his  
6 report in October 2016, in which he checked a box indicating Plaintiff's conditions  
7 impacted her hearing. Tr. 230, 232. While the record does not contain a specific  
8 diagnosis regarding Plaintiff's hearing problems, she reported tinnitus to her  
9 providers, and reported sound sensitivity with her migraines Tr. 281, 285, 289,  
10 302, 318, 334. Therefore, the record supports Mr. Chambers' statement.

11 On remand, the ALJ will reassess the third-party evidence and give germane  
12 reasons for the weight assigned.

### 13 **3. Medical expert testimony**

14 Two medical experts, an ophthalmologist and a neurologist, testified at the  
15 hearing. Tr. 39-52. Both experts indicated that no listing was met or equaled and  
16 stated that Plaintiff had no specific workplace functional limitations from her  
17 impairments. Tr. 41-42, 49. The ALJ gave each expert substantial weight. Tr. 22.

18 Plaintiff argues the ALJ erred in assigning substantial weight to the medical  
19 experts, arguing that the testimony was equivocal at best and that the neurologist's  
20 comment that Plaintiff had not received the full range of treatments indicated the  
21 file was incomplete. ECF No. 13 at 9-10.

22 The Court finds no error. An ALJ need not provide reasons for assigning  
23 great weight to an opinion, and the record contains substantial evidence to support  
24 the ALJ's reliance on the opinions. The record was fully developed with all  
25 available treatment evidence, and the fact that alternative or additional headache  
26 treatment modalities exist does not render the file incomplete.

27 ///

28 ///

1           However, as this claim is being remanded for further consideration of  
2   Plaintiff's subjective complaints, the ALJ shall also reconsider the medical  
3   evidence and any additional evidence that may be submitted.

4   **4.     Step two**

5           Plaintiff argues the ALJ erred at step two in failing to find a number of  
6   impairments to be severe, including migraine headaches with aura, tinnitus and  
7   hearing difficulty, and various visual impairments associated with intracranial  
8   hypertension and other eye conditions. ECF No. 13 at 11.

9           The Court finds any error was harmless. Step two was resolved in Plaintiff's  
10   favor, and the ALJ continued with the five-step analysis. The ALJ relied on the  
11   testimony of the medical experts in determining which of Plaintiff's conditions  
12   were medically determinable and severe.

13          However, on remand, the ALJ will reconsider all medical evidence and any  
14   new evidence submitted, and make new step two findings as warranted.

15   **5.     Step three**

16          Plaintiff argues the ALJ erred in making inadequate step three findings. ECF  
17   No 13 at 12-16. Specifically, she asserts the ALJ failed to reference any medical  
18   evidence in finding Listing 11.02 was not met or equaled, and argues the ALJ  
19   should have further developed the record with a neurological consultative exam.  
20   *Id.* Defendant argues the record was not incomplete and thus the ALJ was under no  
21   obligation to order additional testing. ECF No. 14 at 11. Defendant further argues  
22   the ALJ reasonably relied on the medical expert testimony in finding Plaintiff's  
23   conditions did not meet or equal any listing.

24          At step three of the sequential evaluation process, the ALJ considers whether  
25   one or more of the claimant's impairments meets or equals an impairment listed in  
26   Appendix 1 to Subpart P of the regulations. 20 C.F.R. § 404.1520(a)(4)(iii). Each  
27   Listing sets forth the "symptoms, signs, and laboratory findings" which must be  
28   established for a claimant's impairment to meet the Listing. *Tackett v. Apfel*, 180

1 F.3d 1094, 1099 (9th Cir. 1999). If a claimant meets or equals a Listing, the  
2 claimant is considered disabled without further inquiry. 20 C.F.R. § 404.1520(d).

3 Listing 11.02 requires a showing of:

4  
5 “Epilepsy, documented by a detailed description of a typical seizure and  
6 characterized by A, B, C, or D:

7 ...

8 B. Dyscognitive seizures (see 11.00H1b), occurring at least once a week  
9 for at least 3 consecutive months (see 11.00H4) despite adherence to  
10 prescribed treatment (see 11.00C).

11 OR

12 C. Generalized tonic-clonic seizures (see 11.00H1a), occurring at least  
13 once every 2 months for at least 4 consecutive months (see 11.00H4)  
14 despite adherence to prescribed treatment (see 11.00C); and a marked  
15 limitation in one of the following:

- 16 1. Physical functioning (see 11.00G3a); or
- 17 2. Understanding, remembering, or applying information  
18 (see 11.00G3b(i)); or
- 19 3. Interacting with others (see 11.00G3b(ii)); or
- 20 4. Concentrating, persisting, or maintaining pace (see 11.00G3b(iii));  
21 or
- 22 5. Adapting or managing oneself (see 11.00G3b(iv)).

23 20 C.F.R. Part 404, Subpart P, Appendix 1, §11.02.<sup>1</sup>

24 The ALJ found Plaintiff’s conditions did not meet or equal Listing 11.02,  
25 noting no treating or reviewing source had found sufficient evidence to conclude  
26 any listing was met or medically equaled, specifically noting the medical experts’  
27 testimony that no listing was met or equaled. Tr. 18.

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<sup>1</sup> There is no listing for headaches, but they are typically evaluated under  
this listing, as was noted by the medical expert. Tr. 49.

1 The Court finds the ALJ did not err, and reasonably relied on the testimony  
 2 of the medical experts. However, on remand, the ALJ will reconsider each of the  
 3 steps in the five-step process in light of reassessing Plaintiff's subjective reports.

4 **6. Job findings**

5 Plaintiff argues the above errors resulted in an inaccurate RFC and a  
 6 decision that is not supported by substantial evidence. ECF No. 13 at 20-21.  
 7 Considering the case is being remanded for the ALJ to correct other errors, the ALJ  
 8 shall also complete the five-step analysis and make new step four and step five  
 9 determinations as necessary.

10 **CONCLUSION**

11 Plaintiff argues the ALJ's decision should be reversed and remanded for the  
 12 payment of benefits. The Court has the discretion to remand the case for additional  
 13 evidence and findings or to award benefits. *Smolen v. Chater*, 80 F.3d 1273, 1292  
 14 (9th Cir. 1996). The Court may award benefits if the record is fully developed and  
 15 further administrative proceedings would serve no useful purpose. *Id.* Remand is  
 16 appropriate when additional administrative proceedings could remedy defects.  
 17 *Rodriguez v. Bowen*, 876 F.2d 759, 763 (9th Cir. 1989). In this case, the Court  
 18 finds that further development is necessary for a proper determination to be made.

19 The ALJ's RFC determination is not supported by substantial evidence in  
 20 this case and must be reevaluated. On remand, the ALJ shall reevaluate Plaintiff's  
 21 subjective complaints and the evidence from the third-party, and make new  
 22 findings on each of the five steps in the sequential process, taking into  
 23 consideration any other evidence or testimony relevant to Plaintiff's disability  
 24 claim.

25 Accordingly, **IT IS ORDERED:**

26 1. Plaintiff's Motion for Summary Judgment, **ECF No. 13**, is  
 27 **GRANTED IN PART.**

28 ///

1           2.     Defendant's Motion for Summary Judgment, **ECF No. 14**, is  
2 **DENIED.**

3           3.     The matter is **REMANDED** to the Commissioner for additional  
4 proceedings consistent with this Order.

5           4.     An application for attorney fees may be filed by separate motion.  
6           The District Court Executive is directed to file this Order and provide a copy  
7 to counsel for Plaintiff and Defendant. Judgment shall be entered for Plaintiff and  
8 the file shall be **CLOSED.**

9           **IT IS SO ORDERED.**

10          DATED November 16, 2020.

A handwritten signature in black ink, appearing to be "M", is written above a horizontal line.

JOHN T. RODGERS  
UNITED STATES MAGISTRATE JUDGE